



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 22, 1998

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR98-1707

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116680.

The Texas Department of Public Safety (the "department") received three open records requests for records pertaining to a "Request For Offers" for the Remote Sensing Component of the Texas Motorist's Choice Program. You have submitted to this office two categories of information that you seek to withhold from public disclosure: portions of a bid proposal that was submitted to the department in connection with the RFO and certain internal memoranda. You contend that these documents are excepted from required public disclosure pursuant to sections 552.110 and 552.107(1), respectively, of the Government Code.

We will first discuss the applicability of section 552.107(1) of the Government Code to the memoranda at issue. Section 552.107(1) is intended to protect the attorney-client privilege. Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. See Open Records Decision No. 462 (1987) (statutory predecessor to section 552.107(1) does not protect basic factual recitations). We agree that portions of the records you submitted to this office constitute either client confidences or an attorney's legal advice or opinion, and have marked the documents accordingly. The department, however, must release the remaining portions of these documents.

We now discuss whether the requested bid proposal is excepted from public disclosure. In accordance with the practice this office established in Open Records Decision No. 575 (1990), we notified representatives of Tracor Aerospace, Inc. ("Tracor"), the submittor of the proposal, that we received your request for an open records decision regarding this information. In our notification, this office requested an explanation as to why any of the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation within a reasonable time this office would instruct the department to disclose the information.

Tracor timely responded to our notification and contends that portions of the proposal and other documents come under the protection of section 552.110 of the Government Code, which excepts from required public disclosure "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." There are six factors to be assessed in determining whether information qualifies as a trade secret.<sup>1</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). This office must accept a claim that information is excepted as a trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5. However, where no evidence of the factors necessary to establish a trade secret claim is made, we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983).

We have reviewed Tracor's arguments for withholding certain portions of the proposal and other documents and conclude that Tracor has made a prima facie case for withholding most of the information at issue as "trade secrets" under section 552.110. Some of the information, however, consists of descriptions of the "interface" between the department's and Tracor's databases. These documents are particular to Tracor's implementation of the Texas Motorist's Choice Program, and as such relate more "to single or ephemeral events in the conduct of the business" that are not protected as trade secrets. *See* RESTATEMENT OF TORTS § 757 cmt. b (1939). We therefore conclude that the department must withhold pursuant to section 552.110 only the highlighted portions of pages 3-9 and all of pages 14-31 of Tracor's proposal, as well as the documents labeled "Audit Vehicle

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<sup>1</sup>These six factors are

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Functional Design Review” and “Technical details pertaining to VID and registration DB updates.”

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/RWP/ch

Ref.: ID# 116680

Enclosures: Submitted documents

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